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Task Force to Tackle Volume, Delays in Commercial Division

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A task force on commercial litigation in state courts convened by Chief Judge Jonathan Lippman will look for solutions to delays and overcrowded dockets that plague the Commercial Division in an effort to keep business cases from fleeing to other venues.

Manhattan Commercial Division Cases				
	2011	2010	2009	2008
Disposed	1,402	1,873	1,614	1,367
Pending	2,573	2,238	2,267	2,145

SOURCE: Office of Court Administration

The 30-member group, officially called the Task Force on Commercial Litigation in the 21st Century, was announced as part of Judge Lippman's Feb. 14 State of the Judiciary address and is chaired by former Chief Judge Judith S. Kaye, now of Skadden Arps Slate Meagher & Flom, and Martin Lipton of Wachtell, Lipton, Rosen & Katz ([NYLJ, Feb. 15](#)). The group's members were announced on Feb. 21.

The chief judge's message called for "reinvigorating" the Commercial Division.

"While New York has long been an international center of commerce—with the state's judiciary playing a significant role in that prominence—it is imperative that we continue, in today's highly competitive world, to seek ways to make our great state an even more hospitable environment for business and keep New York at the cutting edge of how commercial disputes are resolved," Judge Lippman said in a statement.

Created in 1995, the Commercial Division was intended as a state court forum for business litigation comparable in sophistication to federal court or other state courts like the Delaware Chancery Court. Since its founding, its case load has steadily increased. In the last four years, the number of pending cases in the Commercial Division statewide has increased by 12 percent, to 5,697 at the end of 2011 from 5,084 at end of 2008. The court system has 25 judges handling commercial cases in 11 counties.

Task Force on Commercial Litigation

Chairs

Judith S. Kaye, Skadden, Arps, Slate, Meagher & Flom

Most recently, the Commercial Division has been hard hit by budget cuts, which eliminated judicial hearing officers, former judges who handled a significant part of its case load. The division is also losing funding for its judges to have special additional clerks.

While members of the task force interviewed by the Law Journal praised the Commercial Division's work, all agreed that it is dangerously overburdened, and that its caseload will likely only increase.

Kathryn S. Wylde, CEO of The Partnership for NYC, a business coalition, said that in the last few years businesses had developed concerns about "the volume of cases and the length of time that it frequently takes to resolve issues because the calendar of the commercial court is overloaded."

Ms. Wylde, a member of the task force, said those concerns had arisen only in the last few years.

"I was at the 10th anniversary [celebration in 2005], and things were clicking along then," she said.

Corporate clients, Ms. Wylde said, expect the court to "have as much focus on the efficiency and capacity of its Commercial Division as a state like Delaware, which all of a sudden seems to be way out in front of us."

New York could become a less attractive venue for business if it does not provide a fast and efficient forum for commercial litigation, she said.

"From our standpoint, an efficient, well-resourced commercial court is part of the attractiveness of New York for business and job creation," she said. "What we're concerned about being lost are jobs."

Steven M. Cohen of Zuckerman Spaeder, said that while he believed the Commercial Division was handling its current caseload well, the combination of tightening budgets and increasing volume could pose a problem in the near future.

"There's a general sense that the Commercial Division should be, and has been, one of the premier courts in all of the United States," said Mr. Cohen, who is also on the task force. "There are concerns going forward about how to maintain that preeminence."

Mr. Lipton put the problem succinctly: "The challenge, obviously, is the very, very heavy docket."

One possible solution the task force will consider is a proposal for new legislation, made by Judge Lippman in last week's speech, that would establish a new class of Court of Claims judges appointed by the governor who would serve in the Commercial Division. Judge Lippman said these judges would be drawn from the ranks of "seasoned commercial practitioners." The law would have the two-fold effect of relieving pressure on the Commercial Division judges and of creating a pool of judges with commercial backgrounds.

"I think it's a brilliant idea to help ensure, in the future, a broad pool of judges with commercial litigation experience," said Mark C.

Martin Lipton, Wachtell, Lipton, Rosen & Katz

Members

William T. Allen, New York University School of Law
John Coffee, Columbia Law School
Steven M. Cohen, Zuckerman Spaeder
Barry Cozier, Epstein Becker & Green
Stephen G. Crane, JAMS
Anthony Crowell, New York City Mayor's Office
Stephen M. Cutler, JP Morgan Chase & Co.
Tracee Davis, Zeichner Ellman & Krause
Justice Elizabeth H. Emerson, Suffolk County Supreme Court, Commercial Division
Justice Bernard J. Fried, Manhattan Supreme Court, Commercial Division
Michael Garcia, Kirkland & Ellis
Robert J. Guiffra Jr., Sullivan & Cromwell
Robert L. Haig, Kelley Drye & Warren
Kenneth A. Kanfer, Snitow, Kanfer, Holtzer & Millus
Roberta A. Kaplan, Paul, Weiss, Rifkind, Wharton & Garrison
William M. Lewis Jr., Lazard, Ltd.
Lewis J. Liman, Cleary Gottlieb Steen & Hamilton
James McGuire, Dechert
E. Leo Milonas, Pillsbury Winthrop Shaw Pittman
Ronald Minkoff, Frankfurt Kurnit Klein & Selz
Philip T. Ruegger III, Simpson Thacher & Bartlett
Paul D. Sarkozy, Tannenbaum Helpern Syracuse & Hirschtritt
Amy W. Schulman, Pfizer Inc.
Kathleen Sullivan, Quinn Emanuel Urquhart & Sullivan
David H. Tenant, Nixon Peabody
Kathryn S. Wylde, The Partnership for NYC
Stephen P. Younger, Patterson, Belknap, Webb & Tyler
Mark C. Zauderer, Flemming Zulack Williamson Zauderer

Commercial Division Cases					
County		2011	2010	2009	2008
Albany	Disposed	22	31	45	42
	Pending	66	49	37	40
Erie	Disposed	284	245	236	267
	Pending	417	278	381	228
Kings	Disposed	311	303	307	271
	Pending	765	680	581	589
Monroe	Disposed	30	187	219	251
	Pending	137	243	194	218
Nassau	Disposed	454	378	479	393
	Pending	767	952	840	910
Onondaga	Disposed	41	33	32	17
	Pending	52	33	26	30
Putnam	Disposed	0	1	0	0
	Pending	0	4	1	0
Queens	Disposed	217	231	204	132
	Pending	309	316	354	312
Suffolk	Disposed	304	360	292	241
	Pending	526	458	486	439
Westchester	Disposed	106	96	206	212
	Pending	85	94	112	173

SOURCE: Office of Court Administration

another task force member.

Possible measures to improve case management include using more special masters, "front-loading" the disposition of issues that could lead to a resolution of cases and putting in place electronic discovery protocols.

Ms. Kaye stressed that while the task force would consider a wide range of reforms, its work should not be taken as sign that the Commercial Division is broken.

"I think it's not so much problems that need fixing as that the Commercial Division came into existence in 1995, that the world has changed enormously," she said. "It's almost two decades of a very different business community."

Mr. Lipton echoed that sentiment.

"The creation of the task force is not a criticism of the Commercial Division in any way," he said. "Rather, it's a recognition that it's been enormously successful."

Commercial Division courts are located in 11 counties around the state: Albany, Erie, Kings, Monroe, New York, Nassau, Onondaga, Putnam, Queens, Suffolk and Westchester.

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Counsel

Jeremy R. Feinberg, Office of Court Administration

Zauderer of Flemming Zulack Williamson Zauderer, another task force member. "That's of tremendous benefit to parties and the lawyers representing them as cases work their way from inception to the point of settlement or trial."

Another possible way to lessen the caseload would be to increase the threshold amount-in-controversy for cases to be accepted into the Commercial Division, which currently stands at \$150,000, according to Ms. Kaye. And, she said, the court could do more to encourage the use of alternative dispute resolution, such as mediation.

"We're going to look at it from every single point of view," Ms. Kaye said.

In addition to trying to reduce the case load, the task force will look for ways to streamline the court's case management.

"The division is known for good case management, but there are ways to make case management even better," said Stephen P. Younger of Patterson Belknap Webb & Tyler,



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